

**UNIVERZITA KARLOVA V PRAZE**  
**PRÁVNICKÁ FAKULTA**

**DISERTAČNÍ PRÁCE**  
**Právo veřejných podpor v České republice**

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## Summary

The subject-matter of the thesis „Právo veřejných podpor v České republice“ (“State Aid Law in the Czech Republic”) is regulation of state aids within the European Union and especially its impacts on the legal order of the Czech Republic. The author’s approach is that the regulation of state aids, although originating from the EU law, has significant impacts into the Czech law, into the areas of business, competition, administrative and civil law.

Hence, the basic aim of the thesis is not only to describe the state aid regulation on the EU level but also to specify implications to the Czech law and interactions between the state aid rules and Czech national laws. In this respect, the thesis enters a new field within the Czech academic literature. No other similar work has been published, with exception of Michael Kincls’s work „*Veřejná podpora v Evropské unii*“ (“State Aid Law in the European Union”) of 2004 which was, however, aimed more as an easily understandable hand-book for public authorities granting aids than as an academic work.

In the introductory chapters of the thesis the author explains what is the purpose of the state aid regulation (chapter 3) and deals with the legal sources of such regulation and evolution of the state aid regulation both on the EU and the national level (chapter 4).

In these chapters, the author also submits an answer to the question of specifics of the Czech state aid regulations in the terminology area. The author analysis different terms used in Czech language versions of the EU legislation and in the Czech national law dealing with the state aid regulation. The author concludes that the terms used in the national law shall be interpreted in accordance with their meaning in the EU law.

Chapters 5 to 7 represent the main part of the thesis. In these chapters, the author defines the notion of state aid, analyses its forms and describes the relationship between state aids and services of general economic interest. In the introduction, the author laid down a hypothesis according to which some relations between public authorities and undertakings in the Czech Republic do not sufficiently reflect application of the state aid rules, especially as to the extent of such application caused by the EU case-law. However, adaptation of these relations into conformity with the state aid rules may not be so problematic. In order to verify this hypothesis the author analysis specific implications of the state aid rules, e.g. to areas of healthcare financing, free public broadband or public transport.

In the given chapters the author describes that the Czech and the EU law shall be interpreted in the area of state aids in their mutual context. Individual legal norms, despite having different origin, do intertwine and shall be interpreted with respect to their purpose. The author describes that the Czech law in some cases regulates identical relations as the state aid regulation. This affects especially Czech rules on control of handling with public funds and property, i.e. the aim of which is to control public spending. Despite the fact that these rules and the state aid regulation do not directly relate, they are not in conflict and they can be complementary. The author points out to the fact that fulfilment of the requirements of national rules does not automatically mean conformity with the EU state aid regulation and vice versa.

In chapter 8 the author briefly describes which state aids may be compatible with the internal market and, hence, also with the EU law and what are the rules for assessing such compatibility. This chapter is followed on by the respective part of the thesis' conclusion (chapter 13) where the author i.a. describes the aims of the Commission for a more economic approach towards state aids.

The author describes that the aim of the Commission for less state aid was not successful, however, mainly due to the financial crisis and exceptional conditions under which large quantities of state aid were granted. In the thesis' conclusion the author also compares the approach of the Commission declared in 2005 State Aid Action Plan and the possible new Commission's approach in the recent Communication of modernisation of state aid control in the EU.

According to the author it is necessary to wait for more detailed steps to be taken based on the mentioned Communication. However, it seems to the author that, in the future, the Commission will approach the state aids as a more active element of economic policy of EU and its Member States with the aim to strengthen EU economy. This could indicate a deflection from the 2005 State Aid Action Plan which expressly demanded less state aid to be granted.

Chapter 9 and 10 describe procedural aspects of state aid control and assessment before the Commission and EU and national courts. Due to the aim of the thesis, these topics are not described in more detail with exception of chapter 10.4 describing the role of national courts in state aid enforcement. In this chapter, the author analysis possibilities of undertakings to reach national courts in state aid matters.

Chapters 11 and 12 represent an important part of the thesis. In chapter 11, the role of the Czech Office for the Protection of Competition in the area of state aids is described. The Office for the Protection of Competition (and the Ministry of Agriculture) act as co-ordinating authorities in the area of state aids. However, their competence is not set forth unambiguously by the law. The author points out to the possible look-holes in the national regulation. Following this chapter, the author summarizes possibilities of amendments of existing regulation in the conclusion of the thesis.

In chapter 11, the author also deals with another partial aim of the thesis which is to analyse whether the implementation of state aid rules to the national law is effective and correct and whether any amendments could be made to improve enforcement of state aid rules. The hypothesis laid down by the author is that the regulation does not provide much space for national implementation, however, yet there are possibilities of different approaches to the implementation.

The Office for the Protection of Competition (and the Ministry of Agriculture) are representing Czech authorities towards EU bodies. Under the author's view, the most important role of the Office is within the notification process of new state aids to the Commission. The Czech Law on State Aid Related Issues stipulates that the Office shall act as a co-ordinator in this process. However, the author reached a conclusion that this does not mean that the Office is a necessary intermediate in the notification process.

The author i.a. describes that the Czech Law on State Aid Related Issues provides for a duty of public authorities to ask the Office for the Protection of Competition (or the Ministry of Agriculture) for its opinion to motions submitted within the proceedings before the Commission. However, the law states no sanctions for breach of this duty. Even if the opinion issued by the Office is negative, it has only legal power of a recommendation. The duty of public authorities to co-operate with the Office during the proceedings is not enforceable. Therefore, the author suggests that the powers of the Office for the Protection of Competition (and the Ministry of Agriculture) shall be enhanced and gives examples of possibilities of such enhancement as used in other national laws.

The author further describes the Czech Central Registry of *de minimis* state aids as a specific form of national implementation of state aid rules. Implementing such a registry is allowed but not required by EU law. In chapter 11 and in the conclusion chapter, the author analysis the Central Registry in more detail including proposals *de lege ferenda*.

According to the author, it is too early to assess benefits of having the Central Registry. The author describes arguments for and against having the Central Registry and lays down a question, whether the registry could serve also purposes other than closely related to state aid regulation, such as increasing transparency of public sector expenditures.

The author recommends that the benefits of the Central Registry shall be assessed within a certain period of time, e.g. 4 years. The analysis shall confirm whether the Central Registry serves its claimed purposes and offers anticipated benefits or not.

In chapter 12, the author analyses the implications of the breach of the state aid rules into the Czech law, especially as regards validity and enforceability of measures under which an illegal state aid is granted (administrative decisions, private law contracts etc.). The author also describes how the answer to this problematic will be affected after the New Czech Civil Code becomes effective.

In the conclusion chapter, the author evaluates the current system of state aid control and offers suggestions for its changes (*de lege ferenda*). The author criticizes the current system of assessing compatibility of state aids with the internal market (procedure under Art. 107 (2) and (3) of the Treaty on Functioning of the European Union). Under the current regime, the Commission scrutinizes, with some exceptions, all state aids without regard to their amount and the fact that they affect competition or trade between the Member States to a lesser level. In practice, the proceedings before the Commission are too time-consuming.

The author describes approaches towards the reform of the state aid control including proposals provided for in the recent Commission Communication on EU State Aid Modernisation. Under the author's view, the Commission intends to reform the state aid control by focusing only on important cases. To reach this goal, the Commission apparently intends e.g. to raise the limits for *de minimis* aids or to raise levels for block exemptions.

The author criticizes this approach and inclines toward an approach suggesting decentralization of state aid control in a way similar as in the competition law area. Under the author's view, the compatibility of smaller state aids and state aids with a lesser impact on trade between the Member States with the internal market shall be assessed by national competition authorities. The author refers to academic literature promoting such an approach and provides for other new arguments substantiating such an approach which are based on the conclusions of the thesis.